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September 22, 2023

Megan,

I am submitting these brief comments on the August 15, 2023 Permit Renewal proposed final Permit (**proposed final Permit**) issued by the New Mexico Environment Department (**NMED**) for the Waste Isolation Pilot Plant (**WIPP**). The proposed final Permit is based upon the December 20, 2022 Permit Renewal draft Permit (**draft Permit**) issued by NMED, modified by a Settlement Agreement and Stipulation on the Draft Permit signed on June 23, 2023, by parties opposed to the draft Permit who participated in formal negotiations with NMED and the WIPP Permittees over a four-day period. I participated in those negotiations as the only non-affiliated private citizen.

NMED published a “Table of Changes” (AR 230821) on August 15, 2023, identifying changes made between the draft Permit and the proposed final Permit as a result of the formal negotiations. I am particularly supportive of the following changes:

- Part 2, Section 2.14.3, “Repository Siting Annual Report” – the final language is primarily the product of Don Hancock from SRIC, but notable in adding specificity to language initially proposed by NMED. This requirement is intended to hold DOE accountable for showing evidence of annual progress on this effort, and to insure that WIPP doesn’t remain the only disposal site for all transuranic waste.
- Part 4, Section 4.2.1.5, “Legacy TRU Waste Disposal Plan” – the opposing parties acquiesced to allow construction of new panels 11 and 12, with the stipulation that the Permittees define what constitutes legacy waste, as opposed to other waste categories potentially destined for disposal at WIPP, such as diluted surplus plutonium. They must also develop a Legacy Waste Disposal Plan in consultation with generator/storage sites and stakeholders within one year of Permit issuance. The intent is to ensure that “to the extent practicable... Panel 12 will be reserved for the disposal of legacy TRU mixed waste.”
- Part 4, Section 4.1.1.2.iii, “Disposal Locations and Quantities” – this new section stipulates, “... future capacity [beyond Panel 12] shall be requested through the submittal of a renewal application which describes the final facility footprint.” While this requirement kicks the “Forever WIPP” can down the road for another day, it hopes to end the despised process of incremental permit modifications that has historically allowed the Permittees to request changes to the Permit without having to lay all their cards on the table, so to speak.

I believe I played a significant role in negotiating those last two conditions, and I am grateful for the opportunity to participate in the negotiations that resulted in this proposed final Permit.

That concludes my comments on the current proposed final Permit. However, I'm not finished. What follows does not require any response to comments upon issuance of the renewed Permit.

I want to share my insights on how the WIPP Permit was managed following my removal from the NMED WIPP Permit Group in May 2011, and how I am optimistic for the direction the current group now appears to be taking.

During the Martinez administration, from 2011 to 2018, I would characterize the guiding principle for the NMED WIPP Group as that of being enablers for the Permittees, rather than being regulators (perhaps with the exception of how the 2014 drum rupture incident was handled).

When I was the WIPP Project staff manager, I followed three guiding principles (or mantras, as I called them) that directed my approach to work. The first two never changed, but the third could be modified depending upon the particular circumstance at the time:

1. **“Focus on the process, not the personality”** – know the regulations, know the Permit requirements, know what needs to be done for compliance and how to do it, regardless who is across the table from you. Whether it's a Cabinet Secretary, a CBFO manager, an elected official, a low (or high) level staff person from the facility, a member of the public... it shouldn't matter. Be respectful but not intimidated. Whether you like them or not, whether they can get you fired (or reassigned, in my case), just speak truth to power and be firm in your convictions based upon what is clearly right, and articulate what is clearly wrong.
2. **“Whatever you do, it's got to be based on the [administrative] record”** – you can't act on a verbal request or a promise by someone to do something, and you can't act on something that is inconsistent with the record, no matter how persuasive it may sound. For me, the outcome of the 2018 “Volume of Record” modification is the classic example of the result of ignoring this guiding principle. What was clearly inconsistent with the bulk of the record regarding volume calculations was instead embraced by NMED and defended at hearing and on appeal, with the inevitable outcome being the “Forever WIPP” conundrum we now face.
3. **“[Your preferred guiding principle here]”** – this could be anything, and I forget all the permutations I went through over the years (one of them was particularly crude), but consider one or more of the following:
  - i. **“Trust, but verify”** – a saying made famous by President Reagan in his dealings with the Soviet Union. Initially give the other party the benefit of the doubt, but if they prove themselves untrustworthy (e.g.,

misleading, incomplete, or otherwise not “true, accurate, and complete” per 40 CFR 270.11(d)(1)), consider that trust lost. This applies uniformly to the Permittees, political appointees, members of the public, and maybe even your own staff.

- ii. **“Always do right; this will gratify some people and astonish the rest.”** – attributed to Mark Twain, this adage is one that enabled me to sleep at night with a clear conscience. I sometimes wondered whether some of my counterparts who represented the Permittees could make the same claim.
- iii. **“Get a second (or third) opinion”** – when in doubt, seek advice from someone with a broader/deeper perspective than you may have. A fool thinks they know it all, a wise person admits how little they actually know. I always carefully considered public comments, because occasionally they were the ones who pointed out that “the emperor had no clothes” (that is, the Permittees were mistaken). You guys know how to contact me, and I’m always willing to provide my unvarnished perspective.
- iv. **“They’re playing chess, not checkers”** – the Permittees have hired the best people money can buy, and you’re not one of them because you’re not for sale. Your job is not to simply react to the permit modification request of the moment, but to anticipate three, four, or more potential moves on the chessboard... where are they ultimately going with this? What could be the worst possible future outcome of granting this request? Again, remember the lesson you should have learned from the Volume of Record decision.

Remember who you are – career civil servants representing the interests of all New Mexicans. You are to be viewed as the unbiased technical, regulatory, and (to some extent) legal experts of all WIPP-Permit related issues, with as complete a knowledge of the history and administrative record of WIPP as humanly possible. At one time, I strove to be the embodiment of that knowledge... my time passed 12 plus years ago, and that mantle has since been placed upon your shoulders.

Also, remember that political appointees, such as cabinet secretaries, division directors, general counsels, etc., change every four to eight years (or more frequently, if you’re lucky). Your job is only to implement their policies consistent with the regulations. Do not abdicate your responsibility to implement the regulations and enforce permit requirements just to satisfy the ego and whims of someone who will be gone long before you are... just consider a prior cabinet secretary from the Martinez administration who is now a vice president with the WIPP M&O contractor. Don’t sell out.

I’m now in my 70s, and these may well be some of my final comments in the WIPP Permit public process. Although I haven’t been involved with WIPP as long as many of those in the various citizen groups, I had a ring-side seat for 17 years as a WIPP regulator, and then a “general admission seat” for almost 13 years as a private citizen. Although I’ve had my share of disappointment with changes to the WIPP Permit over the past five years, I am

encouraged to see this next generation of NMED WIPP staff stepping up from being enablers to being regulators. In negotiations, you took and maintained strong, defensible positions on what you wanted to see in the renewal permit, and you didn't back down. You don't always have to take the side of the Permittees, nor of the WIPP critics. You just need to be true to your guiding principles in serving the people of New Mexico. I hope you won't let them down.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steve Zappe". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Steve Zappe  
Santa Fe, New Mexico